

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 DEANGELO A. GREEN,

11 Plaintiff,

12 v.

13 MARGARET GILBERT, et al.,

14 Defendants.

CASE NO. 3:17-cv-05898-RBL-DWC

ORDER GRANTING MOTION TO
STRIKE

15
16 The District Court has referred this 42 U.S.C. § 1983 action filed by Plaintiff DeAngelo
17 Green to United States Magistrate Judge David W. Christel. Before the Court is Defendants'
18 Motion to Strike Plaintiff's Third Amended Complaint ("Motion"). Dkt. 66.

19 **I. Background**

20 On March 13, 2018, Plaintiff filed a Motion to Amend the Amended Complaint (Dkt. 41)
21 and, the next day, filed an Amended Motion to Amend the Amended Complaint ("Amended
22 Motion to Amend") (Dkt. 43). He attached a Proposed Third Amended Complaint with his
23 Amended Motion to Amend. Dkt. 43-1. The Court granted Plaintiff's Amended Motion to
24

1 Amend in part, and stated “Plaintiff may file his Third Amended Complaint on or before May
2 18, 2018, and should file only his Complaint, omitting any attachments or exhibits.” Dkt. 50.

3 Plaintiff subsequently filed a Third Amended Complaint (Dkt. 54), but it differed from
4 Plaintiff’s Proposed Third Amended Complaint filed with his Amended Motion to Amend
5 (*compare* Dkt. 43-1 with Dkt. 54). On May 31, 2018, the Court directed service of the new Third
6 Amended Complaint on newly named Defendants Clearance Kilwein, Richard D. Boling,
7 Richard W. Estes, and A. Rothwell. Dkt. 63. The Court also directed Defendants Gilbert and
8 Gleason to either answer Plaintiff’s Third Amended Complaint, or to show cause why they had
9 not yet filed an Answer. Dkt. 64.

10 Defendants responded by filing their Motion to Strike, arguing Plaintiff had not filed the
11 Third Amended Complaint authorized by the Court’s Order. Dkt. 66. Plaintiff responded,
12 arguing his allegations had not materially changed in the Third Amended Complaint he filed and
13 that the Court had provided “‘freely’ permission to amend his Third Amend[ed] Complaint.”
14 Dkt. 67. Defendants filed a Reply. Dkt. 68.

15 **II. Discussion**

16 Pursuant to Local Rule 15, “[a] party who moves for leave to amend a pleading . . . must
17 attach a copy of the proposed amended pleading as an exhibit to the motion or stipulation.” That
18 rule also indicates the proposed amended pleading should include markings to indicate how it
19 differs from the previous pleading. LCR 15. If the Motion for Leave to Amend is granted, the
20 party whose pleading was amended “must file . . . the amended pleading . . . within fourteen (14)
21 days of the filing of the order granting leave to amend . . .” *Id.*

22 This rule indicates the proposed amended complaint included with a motion for leave to
23 amend is the amended complaint that should be filed with the Court. When the Court entered its
24

1 Order instructing Plaintiff to file his Third Amended Complaint (Dkt. 66), it did not grant
2 Plaintiff leave to freely file a new, different amended complaint. Rather, it contemplated Plaintiff
3 filing the Proposed Third Amended Complaint the Court reviewed and determined was an
4 appropriate amendment. Because Plaintiff did not file the same pleading as the Court reviewed
5 when it granted his Amended Motion to Amend, the current Third Amended Complaint is
6 improper.

7 Therefore, the Court grants in part Defendants' Motion to Strike (Dkt. 66) and Plaintiff's
8 current Third Amended Complaint (Dkt. 54) is hereby stricken. The Clerk is directed to file the
9 Third Amended Complaint the Court reviewed and approved, attached to his Amended Motion
10 to Amend (Dkt. 43-1), as his Approved Third Amended Complaint.

11 **III. Conclusion**

12 For the reasons stated above, Defendants' Motion to Strike (Dkt. 66) is granted. The
13 Clerk is directed to strike Plaintiff's Third Amended Complaint (Dkt. 54) from the docket.

14 The Clerk is directed to file the Third Amended Complaint (Dkt. 43-1) as an Approved
15 Third Amended Complaint.

16 The Court modifies its Order Directing Service (Dkt. 63) and Order to File Answer (Dkt.
17 64) as follows: Defendants shall have until August 3, 2018 to file an Answer to Plaintiff's
18 Approved Third Amended Complaint.

19 The Clerk is directed to send a copy of this Order to Plaintiff and to counsel for
20 Defendants.

21 Dated this 18th day of July, 2018.

22 

23 David W. Christel
24 United States Magistrate Judge